MASTER AND SERVANT—OCCURRENCE HASTENING DISEASE AN "ACCIDENT" WITHIN COMPENSATION ACT.—An employee of a coal-mining company was afflicted with a serious and chronic disease of the heart. He descended into the mine to his usual working place but found it so filled with smoke that he was forced to leave. Shortly after he reached the surface he died. The Industrial Board found that his death had been caused by accident in the course of employment, and awarded compensation. The mining company appealed. *Held*, award affirmed. *Utilities Coal Co.* v. *Herr et al.* (Ind.), 132 N. E. 262 (1921).

In those States where compensation is given for personal injuries without the qualifying words "received accidentally," the courts have always held that the acceleration or aggravation of an existing disease entitled the employee to compensation. *Hartz* v. *Hartford, etc., Co.*, 90 Conn. 539, 97 Atl. 1020 (1916). And it is the hazard of the employment acting upon the particular employé in his condition of health, and not what that hazard would be if acting upon a healthy employee or upon the average employee." *In re Madden*, 222 Mass. 487, 111 N. E. 379, L. R. A. 1916D, 1000 (1916).

But in many States the statutes require that the injury be accidental. An accident, as used in the Workmen's Compensation Acts, has been held to be an event not within one's foresight and expectation, resulting in a mishap causing injury to the employee. *Vennen* v. *New Dells Lumber Co.*, 161 Wis. 370, 154 N. W. 640, Ann. Cas. 1918B, 293, L. R. A. 1916A, 273 (1915); or any injuries not expected or designed by the workman himself. *In re Heitz*, 218 N. Y. 148, 112 N. E. 750, L. R. A. 1917A, 344 (1916).

The injury sustained by the decedent seems clearly to come within these definitions, and the holding would appear to be eminently sound even under the narrower statute. *In re Bowers*, 65 Ind. App. 128, 116 N. E. 842 (1917).

For a general discussion of this topic see 3 VA. LAW REVIEW 625.

STATUTE OF FRAUDS—MARRIAGE AS PART PERFORMANCE.—The father of the defendants was a widower with several minor children. Plaintiff's mother was unmarried, but pregnant of the plaintiff, whose father was other than defendants' father. Plaintiff's mother married defendants' father upon the latter's oral promise to make the plaintiff, when born, an equal heir with his other children; the plaintiff's mother, on the other hand, promising to be a mother to the minor children of defendants' father. Defendants' father and plaintiff's mother lived together as husband and wife for a number of years and two children were born of this union. But plaintiff's mother later obtained a divorce from defendants' father on the grounds of cruelty and defendants' father, by will, gave his property to his children by his first marriage, expressly excluding plaintiff, whereupon plaintiff brought a suit in equity to compel the specific performance of the oral antenuptial agreement between his mother and his step-father, defendants' father. Defendants relied upon the Statute of Frauds. *Held*, plaintiff could not recover. *Fischer* v. *Fischer* (Neb.), 184 N. W. 116 (1921).

Marriage of the parties is not of itself such part performance of an oral antenuptial agreement to convey property as will take the agreement out of the Statute of Frauds. *Hunt* v. *Hunt*, 171 N. Y. 396, 64 N. E. 159, 59 L. R. A. 306 (1902); *Henry* v. *Henry*, 27 Ohio St. 121 (1875); *Dienst* v. *Dienst*, 175 Mich. 724, 141 N. W. 591 (1913); *Bradley* v. *Sadler*, 54 Ga. 681 (1875). An antenuptial contract, whereby each of the contracting parties is to retain the title to his or her property, and dispose of it as if unmarried, is a contract in consideration of marriage and must be in writing, and if oral the marriage of the parties will not take the agreement out of the Statute of Frauds as by part performance. *Mallory's Adm'r.* v. *Mallory's Adm'r.*, 92 Ky. 316, 17 S. W. 737, (1891); *Finch* v. *Finch*, 10 Ohio St. 501 (1860); *Carpenter* v. *Commings*, 51 Hun, 638, 4 N. Y. Sup. 947, 21 N. Y. St. Rep. 536 (1889). But where a woman has been induced to enter into a contract of marriage by an oral promise on the part of the man to convey lands to her, which promise he fails to perform, the result is such a fraud upon her as will take the promise to convey out of the Statute of Frauds, and, as between them, equity will enforce the contract where the woman has been given possession of the property and made valuable improvements thereon but it has not been conveyed to her. *Moore* v. *Allen*, 26 Col. 197, 57 Pac. 698, 77 Am. St. Rep. 255 (1899); *Neale* v. *Neale*, 9 Wall. (U. S.) 1 (1869).

And if the marriage was brought about without the execution of the conveyance to the wife, by fraudulent representations to do so, and a fraudulent contrivance to deceive her, a court of equity will enforce the agreement and decree the conveyance. *Peek* v. *Peek*, 77 Cal. 106, 19 Pac. 227, 1 L. R. A. 185, 11 Am. St. Rep. 244 (1888). See also *dictum* in *Glass* v. *Hulbert*, 102 Mass. 24, 39, 3 Am. Rep. 418 (1869).